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EX PARTE OR LATE FILED

Federal Communications Commission
Office of Secretary

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July 10, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

EX PARTE NOTICE

**Re: In the Matter of Communications Assistance for Law
Enforcement Act, CC Docket No. 97-213**

Dear Ms. Salas:

Representatives of the Telecommunications Industry Association ("TIA") and its member companies met with staff members of the Commission's Office of Engineering and Technology and the Wireless Telecommunications Bureau on July 9, 1998. This meeting was requested by TIA to discuss the challenges to the industry standard (J-STD-025) brought by the Federal Bureau of Investigation and the Center for Democracy and Technology. The meeting was attended by the following Commission personnel:

**Charles Iseman
Julius Knapp
Tim Maguire
Scott Thayer
David Wye**

Pursuant to 47 C.F.R. § 1.1206, an original and two copies of this letter and the slide presentation provided at the meeting are enclosed for filing. Also enclosed is an additional copy of these materials, which we request that you date stamp and return with our messenger. We are providing copies of this submission to the Commission staff present at the meeting, and to the office of each Commissioner.

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Please do not hesitate to contact me if you have any questions.

Sincerely,



Thomas M. Barba

Encl.

cc: Office of Chairman William Kennard
Office of Commissioner Susan Ness
Office of Commissioner Harold Furchgott-Roth
Office of Commissioner Michael Powell
Office of Commissioner Gloria Tristani
David Wye (Wireless Bureau)
Tim Maguire (Wireless Bureau)
Charles Iseman (Office of Engineering and Technology)
Julius Knapp (Office of Engineering and Technology)
Scott Thayer (Office of Engineering and Technology)

Issues in CALEA Deficiency Petitions

Telecommunications Industry
Association

July 9, 1998

Basic Issues

- Purpose of Standards Process
- Nature of Review by Commission
- Changes to Standard (“Remand”)
- Definition of “Call-Identifying Information”
- Meaning of “Reasonably Available”
- Historical Availability

Purpose of Standards Process

TIA Position

- standards process is based on consensus
- TIA and ANSI rules require substantial majority support and full consideration of opposing views
- J-STD-025 had unanimous industry support

DOJ/FBI Position

- no “lowest-common-denominator” standard
- standard must include capability that any manufacturer can provide
- requests often ignore existing provisions of J-STD-025

Review by Commission

TIA Position

- only basis for change to J-STD-025 is that standard is “deficient” under § 103(a):
 - call content
 - call-identifying information
 - delivery to law enforcement
 - security and privacy
- must consider § 107(b) factors (including cost and effect on rates)

DOJ/FBI Position

- concedes point
- generally fails to address § 107(b) factors

Changes to Standard (“Remand”)

TIA Position

- remand to TIA if standard is “deficient”; § 107(b) permits but does not require Commission action
- industry is best situated to develop technologically feasible and cost-efficient solution
- DOJ/FBI Proposed Rule should not be basis for rulemaking

DOJ/FBI Position

- Commission must issue rule if standard is “deficient”
- Commission should prescribe technical requirements for CALEA compliance
- DOJ/FBI Proposed Rule should be basis for rulemaking

“Call-Identifying Information”

TIA Position

- § 102(2): “dialing or signaling information that identifies the origin, direction, destination, or termination of each communication”
- interpretation of § 102(2) in J-STD-025 is reasonable
- “direction” and “termination” relate to call forwarding

DOJ/FBI Position

- expansive, unclear application of terms in § 102(2)
- “call-identifying information” is broader than “call set-up information”
- addition of “direction” and “termination” significantly broadens definition

“Reasonably Available”

TIA Position

- key limitation of § 103(a)(2)
- information must be:
 - accessible to carrier
 - available with carrier equipment
- no requirement to modify network
- must consider business need for information

DOJ/FBI Position

- minimizes scope of limitation (ignores “reasonably”)
- information can be available anywhere in network, to any carrier (ignores “available”)
- cost not dispositive
- business purpose irrelevant

Historical Availability

TIA Position

- § 103(a), not historical evidence, provides standard
- historical availability standard would be unmanageable
- data regarding historical capabilities is limited and in possession of FBI

DOJ/FBI Position

- concedes point
- still tries to justify capabilities involving call-identifying information based upon historical availability standard

DOJ / FBI Petition -- Punch List

- Conference Call Content (1 item)
- “Call-Identifying Information” (4 items)
- Call-Identifying Information Format and Timing (2-3 items)
- “Ensure” Obligation -- Surveillance Status Information (3 items)
- Standardized Interface Protocols (1 item)

Conference Call Content

TIA Position

- held or dropped legs of a conference call are not “to or from” the subscriber
- because intercept is entirely disconnected from named subject, request is inconsistent with “facilities” doctrine and Fourth Amendment

DOJ/FBI Position

- “to or from” should be interpreted in “functional” rather than “physical or geographical” sense (whole network approach)
- argues “facilities” doctrine, without recognizing inapplicability of cited cases

“Call-Identifying Information”

- Post-Cut-Through Dialing
- Subject-Initiated Signaling
- Party Hold / Party Join / Party Drop
- Network-Generated Signaling

Post-Cut-Through Dialing

TIA Position

- not call-identifying information for LEC
- not reasonably available due to limits on tone decoder resources

DOJ/FBI Position

- does not address
- concedes point, but says costs not dispositive
- concedes voice-recognition dialing provided by third party not covered

(cont'd)

Post-Cut-Through Dialing (cont'd)

TIA Position

- FBI wants access on pen register order to LEC -- but information is already available:
 - on CCC
 - from IXC
- credit card numbers, PIN numbers, etc. at risk

DOJ/FBI Position

- CALEA entitles FBI to pen register access:
 - no requirement to use CCC
 - too difficult to go to IXC
- concedes point; focuses on § 207 minimization requirement

Subject-Initiated Signaling

TIA Position

- not call-identifying information under statutory definition
- J-STD-025 provides essentially all network-detected signaling information
- local signaling information is not reasonably available

DOJ/FBI Position

- covered by “direction” and “destination”
- addresses only Change message where call appearances are combined
- clarifies that request does not extend to local signaling

Party Hold / Party Join / Party Drop

TIA Position

- not call-identifying information
- J-STD-025 provides most party join / party drop information
- not reasonably available where action is local
- not historically available

DOJ/FBI Position

- conference call is multiple communications
- addresses only combined call appearances and discretionary Release message
- concedes point
- concedes point (but argues § 103)

Network-Generated Signaling

TIA Position

- all relevant information provided by J-STD-025
- information not provided is not call-identifying information
- audible signaling information is on CCC
- remote network signaling is not reasonably available

DOJ/FBI Position

- does not provide info. on how call terminates, info. presented to subject, or alphanumeric info. other than phone number
- covered by “direction,” “destination” and “termination”
- optional to provide CCC before answer
- clarifies that request does not extend to remote network information

Call-Identifying Information Format and Timing

- Call-Identifying Information on Call Data Channel
- Timing -- Expeditious Delivery
- Timing -- Synchronization

Call-Identifying Information on Call Data Channel

TIA Position

- not required by CALEA and law enforcement clearly recognizes this fact
- not on pre-petition punch list

DOJ/FBI Position

- concedes point, but says Commission should require it anyhow
- indirectly referenced in ESI and SP-3580A ballot

Timing -- Expeditious Delivery

TIA Position

- Section 103(a)(2)(A):
“before, during or immediately after the transmission of a wire or electronic communication”
- no requirement in CALEA to set an explicit maximum time
- DOJ does not show that law enforcement needs more speed than J-STD-025 provides

DOJ/FBI Position

- does not satisfy
“association” requirement when call is long; each call is multiple communications
- J-STD-025 must set some standard; willing to accept 99% reliability
- inapplicable, insulting examples (NYC rape and NYC carrier practice)

Timing -- Synchronization

TIA Position

- no synchronization requirement in CALEA
- not reasonably available because not possible to associate network events with timing at IAP at this level of accuracy

DOJ/FBI Position

- J-STD-025 must set some standard
- clarifies that request does not require synchronization with time of subscriber action

Surveillance Status Information

- Continuity Check
- Surveillance Status Message
- Feature Status Message

Surveillance Status Information -- General Issues

TIA Position

- CALEA does not require capabilities not involving call content or call-identifying information
- Section 103(a) obligation to “ensure” does not create second-order obligation to monitor provision of capabilities

DOJ/FBI Position

- Section 103(a) obligation to “ensure” is primary obligation that requires provision of monitoring capabilities

Continuity Check

TIA Position

- not required by CALEA
- carriers do not use C-tone on trunks, and it would be costly to install additional C-tone generators

DOJ/FBI Position

- covered by “ensure” obligation
- clarifies that request limited to nailed-up CCCs
- clarifies that willing to accept any tone or idle pattern
- cost arguments should be disregarded